UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
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Philadelphia, Pennsylvania 19103-2029

APR 27 2006

Mr. Nelson J. Castellanos
Division Administrator
Federal Highway Administration
City Crescent Building
Suite 2450
10 South Howard Street
Baltimore, MD 21201

RE: Intercounty Connector (ICC) from I-270 to U.S. 1, Montgomery and Prince George's Counties, Maryland, Final Environmental Impact Statement/Section 4(f) Evaluation, CEQ EIS No. 20060004

Dear Mr. Castellanos:

In accordance with the National Environmental Policy Act (NEPA), Section 309 of the Clean Air Act, Section 404 of the Clean Water Act (Section 404), and the Council on Environmental Quality (CEQ) regulations implementing NEPA (40 CFR 1500-1508), the U.S. Environmental Protection Agency (EPA) has reviewed the Final Environmental Impact Statement (FEIS) for the proposed Intercounty Connector (ICC) project, dated January 3, 2006. The FEIS has been developed by the Federal Highway Administration (FHWA) and Maryland State Highway Administration (SHA) based on the Draft Environmental Impact Statement (DEIS) presented to the public and the regulatory agencies in November 2004. This letter and the supporting technical comments discuss construction and operation of the ICC in Corridor 1, the FEIS' preferred alternative. We understand, however, that a final decision for a build alternative with specific options will not be made by the FHWA until the Record of Decision (ROD). The No Build alternative clearly has the least environmental harm. EPA has stated a preference for Corridor 2, if a build alternative would be selected, based on avoidance of the highest quality natural resources.

A proposed transportation link between I-270 (Gaithersburg) and I-95/US 1 (Laurel/Konterra) has been studied for decades. Two Environmental Impact Statements (EIS) have been prepared prior to this current study. This third study commenced in summer 2003, a few months after the project was placed on the Executive Order (EO) 13274 (Environmental Stewardship and Transportation Infrastructure Project Review) as a national transportation priority project. A Cabinet-level task force was established to oversee progress on the transportation projects listed in the EO. EPA has been involved in the project at the staff level, as a participant in the Interagency Working Group (IAWG) and at the executive management level as a member of the Principals Plus One (P+1) group. EPA has provided formal written

comments after circulation of the Purpose and Need Statement (June 30, 2003 and September 19, 2003) and on the DEIS (February 25, 2005); informal comments were exchanged throughout the project development.

Our comment letter of February 25, 2005 on the DEIS discussed the EPA's issues and concerns on the proposed highway. We contend that both build alternatives (Corridor 1 and Corridor 2) would have significant adverse environmental impacts. The preferred alternative of the transportation agencies, Corridor 1, will impact important natural resources, particularly in Montgomery County's stream valley parks, including wetland complexes in Northwest Branch and tributary streams to Paint Branch. Our letter of February 25 stated that construction and operation of a highway through a complex of upland, wetland and riparian forest could significantly diminish the structure, function and value of the residual forest.

The transportation agencies' preference to proceed with the ICC on Corridor 1 has been made with the knowledge of the environmental concerns inherent in this alternative. The FHWA and SHA have incorporated many features intended to reduce or mitigate impacts. EPA acknowledges the selection of Option C in Rock Creek and Option A in Northwest Branch as environmental impact avoidance and minimization measures, and supports the two options, as they represent significant savings to parkland and interior forest in Rock Creek and aquatic resources in Northwest Branch. Resources along the alignment will still be degraded and fragmented, but it is expected that minimization, mitigation, enhancement and preservation efforts will help to sustain environmental conditions for the regional area. The aquatic and parkland mitigation package, environmental stewardship projects, and the commitment to environmentally sensitive design and construction methods have addressed many of the concerns in our DEIS comment letter. The development of these plans, and follow through on all commitments made to the public and the regulatory agencies, will need to be carefully observed and tracked to assure compliance. A Memorandum of Understanding (MOU) between the transportation agencies and participating Federal and State resource agencies is being drafted to assure an oversight role for the resource agencies and transparency in the level of accomplishment of all commitments made. The list of commitments, the tracking procedures, the environmental management plan and the use of environmental monitors, will be included in the FHWA's Record of Decision (if a build alternative is adopted) and are crucial commitments to EPA and the public.

Thank you for the opportunity to participate in this study, and to provide comments and recommendations on the environmental issues of this project. If there are any questions, we would be pleased to discuss any comments or suggestions presented in this letter, the technical comments enclosed, or previous comments. As we have not received all public response to the preferred alternative and the FEIS at the time of the writing of this letter, we reserve the right to further comment based on public input. Please feel free to contact either William J. Hoffman, Chief of the Environmental Programs Branch at (215) 814-2995, or Barbara J. Rudnick, principal staff contact, at (215) 814-3322.

Sincerely,

Donald S. Welsh

Donald S. Welsh
Regional Administrator

Enclosure

cc: Neil J. Pedersen, SHA
Christina E. Correale, Corps
John Wolflin, FWS
John Parsons, NPS

TECHNICAL COMMENTS

The format of these comments will closely follow those provided by EPA for the DEIS.

GENERAL PROCESS FOR THE ICC NEPA/SECTION 404 STUDY

EPA has participated in the current ICC study as a Cooperating Agency, at the staff and executive management level, at the request of FHWA and Maryland Department of Transportation. NEPA requires the responsible or lead Federal agency (in this case, FHWA) to consult with and obtain the comments of any Federal agency (a Cooperating Agency) which has jurisdiction by law or special expertise with respect to any environmental impact involved. As the project was placed on the national transportation priority list established under Executive Order (EO) 13274 (Environmental Stewardship and Transportation Infrastructure Project Reviews), it was determined that the traditional Maryland Streamlined Environmental and Regulatory Process would be adapted for the ICC study. The adapted process has entailed a rigorous schedule of expedited deadlines, data collection, analysis and review.

EPA provided formal comment at milestones in the project, such as Purpose and Need, and informal comment on a continuous basis. Overall, the process has been effective in expediting the NEPA/Section 404 study and providing adequate data for analysis. Though any study of this magnitude, and controversial nature, could benefit from additional time and work, the scope of the study of environmental resources and impacts is believed to be appropriate for the NEPA/404 process. While environmental resource agencies may prefer protection of all resources, evaluation of a major public works project requires assessment of resource values and functions, and prioritization of resources in order to accommodate any potential build alternative. The field and office meetings of the IAWG and its subgroups were an effective forum for Federal, State and local government agencies to work cooperatively to identify resources, discuss intrinsic value, priorities and concerns, and to propose methods for avoidance, minimization or mitigation. The process was expedited and effective given the close engagement of State and Federal executive management in the P+1 group, the enhanced role of Federal executives due to an EO, SHA's heightened awareness of environmental issues associated with this project and SHA's acknowledgment of the need to address environmental concerns, through Environmental Stewardship, compensatory mitigation and highway design.

The agencies cooperated in the review of a preliminary copy of the FEIS, and the FEIS signed in early January. The public availability and review process, originally closing in late February, was extended three times (to late March, early April, then to late April) primarily as a result of the need to circulate a correction of an error in the FEIS appendix and later, the release of the PM2.5 air quality analysis. While these extensions are laudable, we believe their incremental nature (and announcement at the close of the comment periods) may have reduced their benefit to the public.

TECHNICAL OVERVIEW AND RATINGS

Adequacy of the Impact Statement, Rating for the Document

The EPA rating of the DEIS was Category 2 (Insufficient Information). More detailed information was requested on a variety of issues, including those discussed below. Overall, the adequacy of the document and proposed project have improved due to additional supplemental studies and environmental commitments.

The EPA requested detailed and comprehensive compensatory mitigation for aquatic resources, interior forest and parkland resources, and Environmental Stewardship (ES) projects. A compensatory mitigation package for aquatic resources and an ES package was finalized in spring 2005. A comprehensive list of sites and conceptual plans was presented. Back-up sites have also been included, in case design or property ownership impediments arise; there will be the ability to incorporate new sites, if there is agreement by the interagency group that an opportunity has been inadvertently overlooked and would provide superior benefit to the local area. The complete mitigation proposal by SHA includes projects for compensatory aquatic mitigation, ES, State regulated forest replacement requirements, land purchases and preservation for replacement of interior forest and parkland which includes the 458-acre Casey property and the 49-acre Santini Road Property. EPA has requested that the commitment list in the ROD specify some of the mitigation and compensation believed not to be clearly identified (or out-dated) in the FEIS tables. EPA has suggested that mitigation monitoring be extended to 10 years, particularly for forested wetlands (the FEIS' suggestion of monitoring for up to five years, p. IV-245, was questioned by several agencies, including EPA, earlier).

Documentation of wetland impacts was considered unclear in the DEIS. Language in the FEIS has clarified the changes in wetland impacts from the previous study in 1996 which did not include resources on the Konterra property. The FEIS also discussed reductions in wetland impacts on Corridor 1 since the DEIS was distributed. Wetland impacts have been reduced from 67 acres in the DEIS, to 48 acres in the FEIS, and stream (perennial, intermittent and ephemeral) impacts were reduced from an upper estimate of 58,200 linear feet reported in the DEIS to about 44,000 linear feet in the FEIS.

A supplemental document has been prepared to evaluate a comparison of impacts between Corridor 1 and 2 for the Rocky Gorge Reservoir watershed ("Comparative Water Resources Hazard Assessment", November 22, 2005). EPA requested a risk evaluation for the reservoir with consideration to direct impacts, indirect impacts, and secondary development. We asked that any measures that could be incorporated to minimize impact be identified. It is evident that progressive deterioration of the reservoir capacity and water quality is currently occurring. Though Corridor 2 may have accelerated water quality impacts as stated in the report, secondary development predicted from Corridor 1 will also impact the Rocky Gorge watershed. The concerns evaluated in the document associated with secondary development related to Corridor 2 are likely to be only somewhat less, or an issue later in time, if Corridor 1 is built. It is clear that selection of Corridor 1 reduces direct risk to the reservoir from hazardous spills.

Though the report indicates that use of MD 28/MD 198 by transport trucks still may pose some risk, it is anticipated that some of the traffic will move to the ICC, if it is constructed. EPA appreciates the effort SHA is making to reduce the possibility of a hazardous spill on the section of US 29 crossing the reservoir, by prohibiting vehicles that are carrying hazardous materials from using the road.

Many issues stated to be of concern in our review of the DEIS have been discussed, and recommendations given, by the IAWG. These include: culvert and bridge dimensions, use of retaining walls to minimize forest and stream encroachment, wildlife passage (for small mammal, amphibian, reptile and deer); deer, reptile and amphibian exclusion fencing; burying or covering rip rap to allow deer crossing, environmentally sensitive construction procedures (especially in areas of temporary wetland disturbance), redundant sediment and erosion controls, placement and style of storm water management facilities, replacement of vernal pools near pools disturbed or removed by construction, phasing construction to limit the amount, and length of time, stripped land is without stabilizing vegetation, etc. These commitments and requirements should be included in State and Federal permit conditions, regarding most or all of these issues.

EPA understands that design and construction decisions are finalized by the design-build team. We expect clear direction given to the team that commitments have been made for environmental impact minimization, environmentally sensitive design, construction and operation. The design-build team should be aware that any opportunity to further avoid and minimize environmental impacts is encouraged and should be implemented. EPA has asked for continued interagency engagement through the design, construction and post-construction monitoring for the ICC, and for its mitigation and ES projects. We expect that the finalized list of commitments for the project will be approved by the interagency team and will be included in the ROD. An MOU is being drafted to assure continued involvement of the interagency team, provide for high levels of monitoring and oversight, transparency of commitments made and success in accomplishing them. Agencies will be able to track progress on all commitments.

Bridge and culvert dimensions have been a particular concern to the IAWG. Bridges are shown at nine locations, and it is expected that no reduction to the commitments will be made, unless there is agreement that a change will significantly reduce natural resource impact, and there is the agreement by the interagency team. EPA has supported the position of Montgomery County and encouraged consideration of resource impact avoidance and minimization at Station 174 through bridging, where a culvert is shown in the FEIS. It has been the position of the EPA that the park function for the community, and stream and seep habitat, would be best maintained with a bridge. As it appears that the County has agreed to a dual culvert system, we expect that all design measures will be taken to assure park conductivity for the public and hydraulic conductivity to preserve seeps and wetlands south of the alignment.

As a general standard, culverts sized to allow a 1.0 ratio (opening area to length) have been considered adequate for deer passage. Though it has been shown that deer will use smaller passages, there has been no study to determine what the statistical level of use may be. The interagency team has agreed that culvert size as small as 12' x 12' size (allowing an opening of

12' x 10' with a 2' sediment bottom) should not greatly compromise use for passage. Any reduction in culvert length or enlargement of the opening dimension could improve function. Accommodation for amphibian and reptile passage, possibly on the edges of a wet cell, to enhance shelter and moisture without strong flow, should be investigated and designed where appropriate. (Alternative design to accommodate amphibians may include establishing vernal pools on either side of the road, and preventing the ability and need to cross over the road).

It is the understanding of EPA that redundant, state-of-the art erosion and sediment controls (ESCs) will be in place during construction in the most environmentally sensitive areas (expected to be the Special Protection Areas and/or any Use III waters). Placement of controls in all areas needs to be made with consideration to potential re-use as vernal pools and to minimize impact to high quality forest. Where alternate locations to reduce intrusion into high quality forest are possible, they should be pursued. For instance, we are concerned about the location of ESC in mature forest around Stations 173-176, south of the alignment; placement to the north may be preferable. Coordination with the park stewards is recommended.

Our technical comments on the DEIS requested detailed description of stormwater management (SWM). It is not apparent that a discussion of possible failures or limits of effectiveness of SWM is highlighted in the FEIS, though the document does identify proposed SWM methods. EPA has been assured that the commitment list in the ROD will include clarification and more details of SWM design and placement. It is expected that all waters in the Special Protection areas and watersheds classified as Use III-Natural Trout Waters will be afforded the SWM design most protective of water quality (including temperature). It is also expected that SWM design will be implemented to ensure the stream channels of the Northwest Branch are protected from further erosion; other measures, such as mitigation projects, will go further to enhance channel stabilization. MDE will oversee implementation of effective SWM, and SHA has committed to meet or exceed all requirements. Similar to the ESCs, it is expected that the locations for SWM are selected with consideration of minimizing removal of mature trees. For example, there is concern about the loss of forest for the SWM pond around Station 756. In general, EPA supports the use of smaller, shaded SWM detention facilities, or underground detention to reduce thermal impact. Preservation of the forest resource within the area designated for a SWM pond and evaluation of underground SWM is strongly encouraged by EPA. These measures would further advance the goal of maintaining the water quality in the Paint Branch watershed.

Additional Comments

The FEIS (Chapter II, Affected Environment) states that nearly all water supply in the area is public served by WSSC's reservoirs. It is our understanding that private wells are in use (for instance, at Cashell Estates). The FEIS references some displaced private wells (Chapter IV Environmental Consequences, 2a and Table IV-50). All ground water well locations, displaced or within approximately 1000 feet of the alignment, should be identified, and a plan should be made to address water supply should wells be affected by construction, or operation, of the highway.

EPA expects that SHA and their contractors will employ Best Management Practices during construction, including methods to minimize and mitigate for construction emissions, noise, vibration, etc. For example, ultra-low sulfur fuels, particulate filters, and electrical generators should be considered to reduce environmental and community disruption where feasible and appropriate.

EPA has strongly encouraged development of the mass transit component of this multi-modal project, and regional mass transit, as part of the coordinated effort needed for improvement in traffic congestion. The Agency recognizes the Maryland Department of Transportation's stated commitment to initiate a transit study with $20 million designated for that purpose. EPA appreciates being informed of the study's progress, and looks forward to seeing incorporation of innovative, state-of-the art mass transit designs, maximizing public use, convenience and benefit. It is hoped that implementation of transit service will be coordinated with, and coincide with, the ICC opening to traffic. Our comments on the DEIS stated that efforts for traffic relief would necessitate improvements in an array of areas, including mass transit. Investment in mass transit, on any new highway infrastructure, as well as dedicated right-of-way available in the DC area, needs to be expedited as one facet of needed changes.